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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

11 CR 747

-against-
Courthouse

United States

: Brooklyn, New York
BURTON DENNISON,

Defendant.

: November 30, 2011
10:00 o'clock a.m.

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TRANSCRIPT OF PLEA OF GUILTY
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

LORETTA LYNCH
United States Attorney
BY: KAREN K. ORENSTEIN
Assistant United States

Attorney

225 Cadman Plaza East
Brooklyn, New York 11201

For the Defendant:

ERIC FRANZ, ESQ.

Court Reporter:

Henry R. Shapiro
225 Cadman Plaza East
Brooklyn, New York
718-613-2509

Proceedings recorded by mechanical stenography,
transcript produced by CAT.

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1 THE CLERK: Criminal cause for pleading,
2 United States versus Burton Dennison.

3 Counsel, state your appearances.

4 MS. ORENSTEIN: Karen Orenstein for the
5 government.

6 MR. FRANZ: Eric Franz for the defendant.

7 THE COURT: Good afternoon, Ms. Orenstein,
8 Mr. Franz, Mr. Dennison.

9 There are all kinds of paperwork up here from
10 which I infer a desire on your client's part to waive
11 indictment and plead guilty to a superceding
12 information--

13 MR. FRANZ: Correct.

14 THE COURT: -- pursuant to this plea agreement
15 that we marked Court Exhibit 1.

16 MR. FRANZ: Correct, your Honor.

17 THE COURT: I can't let you do that Mr.
18 Dennison unless I'm sure that you understand the rights
19 you would be giving up, and the punishment you could
20 face.

21 I'm going to go over all of those things with
22 you now. If I say anything that you don't understand,
23 please tell me, all right?

24 THE DEFENDANT: Yes.

25 THE COURT: You will be placed under oath in

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1 a moment, which means that you have to tell the truth
2 otherwise you can be prosecuted for perjury.

3 Understood?

4 THE DEFENDANT: Yes.

5 THE COURT: Could you swear Mr. Dennison.
6 (Sworn).

7 THE CLERK: State your name.

8 THE DEFENDANT; Burton Dennison.

9 THE COURT: How old are you?

10 THE DEFENDANT: 43.

11 THE COURT: How much education have you?

12 THE DEFENDANT: 12th grade.

13 THE COURT: You finished 12th grade?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you been able to communicate
16 effectively with your lawyer?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you satisfied so far with the
19 representation that he has given you?

20 THE DEFENDANT: Yes.

21 THE COURT: Is your mind clear right now?

22 THE DEFENDANT: Yes.

23 THE COURT: You understand why you are here
24 and what this proceeding is all about?

25 THE DEFENDANT: Yes.

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1 THE COURT: Have you had any drugs,
2 medication or alcohol in the past 24 hours?

3 THE DEFENDANT: No.

4 THE COURT: Ever been treated by a
5 psychiatrist?

6 THE DEFENDANT: No.

7 THE COURT: Mr. Franz, any reason to doubt
8 your client's competence to plead guilty?

9 MR. FRANZ: No.

10 THE COURT: The charge in this superseding
11 information is a felony, which means unless you waive
12 your right to make the government go get an indictment,
13 you can't be required to plead guilty or not guilty.
14 You can't be required to even answer to it.

15 Do you understand what I'm talking about?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Unless you waive the right, Ms.
18 Orenstein would have to go, if she wanted you to be
19 charged with this drug conspiracy, I see in this
20 information, she would have to go in front of a grand
21 jury, which is a room full of anywhere from 16 to 23
22 people, drawn random from the community.

23 Do you understand what I said so far?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And Ms. Orenstein would have to

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1 present information, not evidence, sufficient to
2 persuade a majority, at least 12, not all, to believe
3 there is probable cause, and not proof beyond a
4 reasonable doubt, that the crime here was committed and
5 the crime in this information was committed and that
6 you committed it.

7 Understood?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you read the information?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Because of the features of the
12 process that I mentioned, it's rare that a grand jury
13 doesn't indict someone, prosecutors asks them to
14 indict. It's hard to blame them. It's unheard of. Once
15 in a while the prosecutor asks for an indictment and
16 the grand jury says, no. For all I know you would be
17 one of those lucky people who the grand jury would
18 refuse to indict.

19 Understood?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Of course, you still won't be
22 completely out of the coop, as long as they got
23 approval they could present the case to another grand
24 jury, but still the point remains that the grand jury
25 might refuse to indict and the jury after that.

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1 Understood?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Knowing all of this, is it still
4 your desire to waive your right to require the
5 government to go get an indictment?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You rather just enter your plea
8 as to this information.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has anybody pressuring you to
11 give up your right to grand jury indictment.

12 THE DEFENDANT: No, sir.

13 THE COURT: This is your own voluntarily
14 decision after speaking to your lawyer about your
15 option?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Apart from the promises made to
18 you in writing in this plea agreement, anybody make any
19 promises to you to get you to give up your right to a
20 grand jury indictment?

21 THE DEFENDANT: No, sir.

22 THE COURT: I find Mr. Dennison is acting
23 voluntarily and knowingly and no reason not to accept
24 his waiver, so I
25 do.

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1 The written waiver that is signed, all that
2 means Mr. Dennison, I'm accepting for filing this
3 superceding information signed by the U.S. Attorney as
4 though it were an indictment signed by a grand jury
5 foreperson.

6 You still have a right to plead not guilty to
7 it. Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: If you do that I would schedule a
10 speedy public trial to a jury.

11 Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: The purpose of the trial would
14 not be for you to prove that you didn't do this, you
15 wouldn't have to prove that, you wouldn't have to prove
16 your innocence, you wouldn't have to prove anything.

17 You would be presumed innocent and unless the
18 government overcame that presumption by proving you
19 guilty beyond a reasonable doubt, the presumption of
20 innocence alone would be enough to require the juror to
21 find you not guilty.

22 Understood?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And if you went to trial you
25 wouldn't go alone, you would be represented by Mr.

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1 Franz, a very good lawyer. The two of you would see
2 and hear the witnesses against you, because you would
3 be right here in open court when they testified.

4 You would be sitting at that table, the
5 witnesses would be sitting over here, probably have to
6 move your chair so that you could see them, but you
7 could see them.

8 Mr. Franz could cross them on your behalf, he
9 could object to the government's evidence, he could
10 offer evidence in defense of the charge. He could
11 subpoena witnesses to force them to come to court to
12 testify in your defense.

13 If you went to trial you would have all of
14 those rights.

15 Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You would also have the right to
18 testify if you wanted to and even more importantly a
19 right not to testify and a right to a jury that would
20 respect your right to remain silent.

21 By that I mean, if you went to trial I would
22 make sure from the moment that we began picking jurors
23 that they knew you had an absolute right to remain
24 silent, and a right not to have your silence held
25 against you in anyway or form.

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1 In fact, at the end of the trial I would even
2 mention to the jurors your decision not to testify when
3 they deliberate because you have this fundamental
4 bedrock right to remain silent.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: If you plead guilty and I accept
8 your plea, you would be giving up all of that. You
9 won't have a trial. Giving up the larger right to a
10 trial obviously you would be giving up all the rights
11 that you would have during the trial, that I have gone
12 over with you.

13 I will just find you guilty of this
14 conspiracy charge based on your own words here today,
15 nothing else, and you wouldn't have a right to appeal
16 to a higher court from my finding that you are guilty
17 of this crime.

18 Understood?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you want to give up your right
21 to at that trial and all the rights that you would have
22 at trial by pleading guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: I will ask Ilene just to show you
25 briefly page 12 of your agreement because it looks like

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1 it bears your signature and I'm just going to ask you
2 to confirm whether that is your signature?

3 (Document shown to defendant.)

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And did you read this agreement?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You had enough time to go over it
8 with your lawyer?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You feel the same way, Mr. Franz,
11 you had enough time?

12 MR. FRANZ: Yes.

13 THE COURT: The prison term that a violation
14 of the law you're going to plead guilty to violating
15 carries, could be as long as the rest of your life.

16 Understood?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: There is also a minimum term of
19 imprisonment subject to certain exceptions, but they
20 are not always present. A minimum term of imprisonment
21 of ten years.

22 Understood?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: There is a supervised release
25 term that has to be at least five years long, but could

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1 be longer. In fact, it could be the rest of your life.

2 Understood?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Supervised release follows any
5 jail term you get in the case and what it means when
6 the jail term is over they let you out of jail, but the
7 case isn't over, you are under supervision, which is
8 why they call it supervised release.

9 There is a long list of things you are
10 required to do on supervised release, like report to a
11 probation officer, maybe get vocational training.
12 There is a large list of things that you can't do. You
13 can't commit anymore crimes, big or little, state or
14 federal, use drugs. Those are just four examples that I
15 have given you of the many restrictions on your liberty
16 when you are on supervised release.

17 There is a lot more. And if you violate any
18 of those restrictions and the government, or the
19 probation officer more accurately halls you back in
20 before me, on a violation, if it's proved, you could go
21 back to jail in this case for as long as three more
22 years without credit for the time that you have been
23 out on supervision.

24 Got all of on that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Understand it all?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You face a fine subject to your
4 ability to pay of up to ten million dollars.

5 Understood.

6 THE DEFENDANT; yes, sir.

7 THE COURT: You face a one hundred dollar
8 special assessment I have to impose no matter what.

9 Understood.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You have agreed to criminal
12 forfeiture -- this is an amount to be determined later?

13 MS. ORENSTEIN: Yes.

14 THE COURT: And it looks like you agreed to
15 the entry of a personal money judgment, is that right
16 Ms. Orenstein?

17 MS. ORENSTEIN: An amount to be determined
18 later.

19 THE COURT: Right.

20 In the form of a personal money judgment
21 against the defendant?

22 MS. ORENSTEIN: Yes.

23 THE COURT: Understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, do you have any questions

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1 about the rights you to be giving up by pleading
2 guilty.

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you have any questions about
5 the punishment that you face if you would plead guilty.

6 THE DEFENDANT: No, sir.

7 THE COURT: How about your agreement, do you
8 have any questions about your plea agreement?

9 THE DEFENDANT: No, sir.

10 THE COURT: You are well counseled and I'm
11 sure that you understand the charge. The record needs
12 to reflect that. If you went to trial on this charge
13 the government would have to prove the conspiracy
14 charged in this information beyond a reasonable doubt.
15 That is a conspiracy to distribute a kilo or more of
16 heroin, five kilos or more of cocaine, some marijuana.

17 They would have to prove that beyond a
18 reasonable doubt, then they would have to prove beyond
19 a reasonable doubt that you were a member of it knowing
20 the purpose of the conspiracy was to achieve the goals
21 of distributing those amounts of drugs and intending by
22 your actions to help the conspiracy accomplishing those
23 illegal goals.

24 Those are the things that the government
25 would have to prove beyond a reasonable doubt.

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1 Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions about
4 the charge?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you ready to plead guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Franz, do you know of any
9 reason why your client should not plead guilty?

10 MR. FRANZ: None, Judge.

11 THE COURT: How do you plead to the charge,
12 Mr. Dennison, guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: Are you making this plea
15 voluntarily.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Being pressured by anybody to
18 plead guilty.

19 THE DEFENDANT: No.

20 THE COURT: Apart from the many promises made
21 to you in writing in this plea agreement, marked Court
22 Exhibit One, has anyone made any promises to you to get
23 you to plead guilty?

24 THE DEFENDANT: No.

25 THE COURT: Has anyone promised you what

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1 sentence you will get in the case?

2 THE DEFENDANT: No, sir.

3 THE COURT: Tell me briefly what you did that
4 makes you guilty?

5 THE DEFENDANT: In 2008 I sold a kilo of
6 cocaine, one kilo of heroin and 45 kilos of marijuana.

7 THE COURT: Did you do this on your own or as
8 part of an agreement with at least one other people?

9 THE DEFENDANT: At least one other people.

10 MR. FRANZ: From 2008 to 2011 when he was
11 arrested.

12 THE COURT: Is that right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Where was this, approximately?

15 THE DEFENDANT: In New York.

16 THE COURT: What borough?

17 THE DEFENDANT: Brooklyn.

18 THE COURT: I think that is sufficient. Do
19 you agree, Ms. Orenstein?

20 MS. ORENSTEIN: Yes, I do.

21 THE COURT: I find the defendant is acting
22 knowingly and voluntarily, he understands the rights
23 that he is giving up by pleading guilty and the
24 consequences he faces if he pleads guilty.

25 I find there is factual basis for his plea.

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1 I accept it.

2 What's our date for sentence?

3 THE CLERK: March 23, 2012 at 3:00 p.m.

4 THE COURT: What are the current bail
5 conditions?

6 MS. ORENSTEIN: Released on 150 thousand
7 dollar bond co-signed by two suretors. The government
8 is amenable to continue bond.

9 THE COURT: Do you seek continuation of the
10 release on bond?

11 MR. FRANZ: I do, your Honor.

12 THE COURT: Pending sentence.

13 Granted.

14 Anything else?

15 MR. FRANZ: Nothing further.

16 MS. ORENSTEIN: That date one more time,
17 March 23rd--

18 THE CLERK: Yes. 3:00 p.m.

19 THE COURT: Anything else today?

20 MS. ORENSTEIN: No, your Honor.

21 THE COURT: Thank you both.

22 MR. FRANZ: Minor CJA related matter.

23 THE COURT: On the record, it's nothing
24 related to the record. Does it need to be exparte if
25 it's related to this case?.

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1 MR. FRANZ: It's matter an assignment on
2 another matter for Mr. Dennison, that it's in his
3 interest that I take care of.

4 THE COURT: Come up.

5 (Pause.).

6 THE COURT: Just so you know, it had to do
7 with the permissible scope of Mr. Franz's work under
8 the Criminal Justice Act, as appointed attorney for his
9 client, a collateral proceeding that effects his
10 representation here.

11 Anything else today?

12 MR. FRANZ: No.

13 MS. ORENSTEIN: Thank you.

14 THE COURT: Thank you.

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